

A RESOLUTION

BY FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED LEASE AGREEMENT WITH PROGRESSIVE WELCOME HOUSE SRO, LP FOR THE PURPOSE OF EXTENDING THE TERM OF THE GROUND LEASE AT 234 MEMORIAL DRIVE FOR AN ADDITIONAL FIVE (5) YEARS FOR A TOTAL TERM OF FIFTY (50) YEARS; TO AUTHORIZE THE MAYOR TO EXECUTE A DECLARATION OF LAND USE RESTRICTIVE COVENANTS ON THE SAME PROPERTY FOR THE PURPOSE OF OBTAINING AWARDED LOW-INCOME HOUSING TAX CREDITS; AND FOR OTHER PURPOSES.

WHEREAS, Welcome House is a two hundred and nine unit (209) single room occupancy (SRO) facility located on City owned property that has been leased to an affiliate of Progressive Redevelopment Inc. (PRI);

WHEREAS, an affiliate of PRI currently owns the leasehold interest at the property with on-site services provided by CaringWorks, Inc.;

WHEREAS, Welcome House provides an opportunity for residents to have a decent, safe place to live while receiving on-site support;

WHEREAS, over half of the residents at Welcome House were homeless or at risk for homelessness at the time they moved into the facilities;

WHEREAS, pursuant to 07-R-0677, the City extended the current lease term to 45 years through May 2, 2052 so that Welcome House could be eligible for consideration for highly competitive low-income housing tax credits awarded through the Georgia Department of Community Affairs (DCA);

WHEREAS, DCA awarded PRI's affiliate low-income housing tax credits in an amount of six hundred seventy five thousand seven hundred and thirteen (\$675,713.00) tax credit dollars annually for the benefit of Welcome House;

WHEREAS, in order to undertake capital improvements needed to sustain long-term operation while adding space for tenant services, PRI and/or its affiliate now seeks to sell the credits to its investor, Enterprise Community Investment, Inc.;

WHEREAS, the investor, as condition of tax credit purchase, requires proof of a ground lease with a minimum term of 50 years;

WHEREAS, the Georgia Housing and Financing Authority (GHFA), an instrumentality of the State of Georgia and a public corporation designated as the housing credit agency for the State requires, in part to satisfy the requirement of Section 42 of the Internal

Revenue Code and as a condition of obtaining the low-income housing tax credits awarded by DCA, that Welcome House enter into certain land use restrictive covenants regarding the rent, use, occupancy, and transfer of the property;

WHEREAS, as lessor of the property, GHFA requires the City to enter into the declaration of land use restrictive covenants, said covenants running with the land;

WHEREAS, PRI and its affiliates have provided a much needed service to the City of Atlanta for the last 15 years;

WHEREAS, it would be in the public interest to extend the lease an additional five (5) years for an aggregate term of fifty (50) years to allow for the continued provision of these services in the future; and

WHEREAS, it would be in the public interest to enter into the land use restrictive covenants to facilitate the continued provision of these services in the future.

THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES that the Mayor is hereby authorized to execute a lease agreement amendment with Progressive Welcome House SRO, LP or its affiliates extending the lease for a term not to exceed fifty (50) years for the purpose of providing affordable housing in a manner similar to the affordable housing being provided onsite at this time.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to execute the Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits as substantially shown on Exhibit "A" to this resolution.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to prepare the appropriate contract and covenant agreements for execution by the Mayor.

BE IT FURTHER RESOLVED, that said contractual and covenant agreements shall not become binding on the City and the City shall incur no liability until said agreements have been executed by the Mayor and delivered to the contracting and covenanting parties.

BE IT FINALLY RESOLVED that this resolution shall take effect upon approval of the City Council and approval of the Mayor.



After recording,
return to:

Cassandra V. Knight
Legal Affairs Specialist
Georgia Department of Community Affairs
60 Executive Park Drive South
Atlanta, Georgia 30329
Project # 2007-048

DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (this “Agreement”), dated as of May 14, 2008, by Progressive Welcome House SRO, L.P., a Georgia limited partnership (with its successors and assigns, the “Owner/Lessee”), The City of Atlanta, Georgia (with its successors and assigns, the “Lessor”), and the Georgia Housing and Finance Authority, an instrumentality of the State of Georgia and a public corporation (with any successor to its rights, duties, and obligations, “GHFA” or the “Authority”), is made as a condition precedent to the Authority’s allocation of Federal and State housing tax credits (the “Credits”) to Owner/Lessee.

RECITALS:

A. Lessor owns land in the City of Atlanta, Fulton County, Georgia, more particularly described in the attached **Exhibit A** (the “Land”) and has entered into a 50-year ground lease (the “Ground Lease”) with Owner/Lessee for the Land, on which Owner/Lessee will build a multi-family housing project composed of:

- 209 Low-income units, including no income-producing employee units (the “Low-Income Units”)
- 0 Market rate units, including no income-producing employee units
- 0 Common space management/employee units (non-income-producing)
- 209 Total unit count.

The project will be known as "Welcome House" (the Land and all improvements on it now or in the future are collectively referred to as the "Project" and Owner/Lessee's interest in the Land and Project shall be referred to as the "Leasehold Estate").

B. The Governor of the State of Georgia has designated the Authority as the housing credit agency for the State, and the Authority is responsible for the allocation of the Credits.

C. Owner/Lessee has applied to the Authority for and received allocation of Credits to the Project in an amount not to exceed \$675,713.00 tax credit dollars annually.

D. The Authority has relied upon the facts, statements, and representations in the Owner/Lessee's Application for Credits (the "Application") in deciding to allocate Credits to the Project.

E. To satisfy the requirements of Section 42, this Agreement will impose certain covenants and restrictions on the rent, use, occupancy, and transfer of the Land and Project, which covenants and restrictions will be restrictive covenants running with the Land.

NOW, THEREFORE, in consideration of the promises and covenants in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1 - DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings: "Code" means the Internal Revenue Code; "Section 42" means Section 42 of the Code; "Household" includes individuals and means all occupants of a Low-Income Unit; "Person" means a natural person or entity; "Regulations" means all current and future regulations, rules, rulings, notices, policies, procedures, or other official statements promulgated or proposed by the U. S. Department of Treasury ("Treasury"), the Internal Revenue Service ("IRS"), or Housing and Urban Development ("HUD") pertaining to Section 42 and low-income housing credits. All words and phrases defined in Section 42 or in the Regulations shall have the same meaning in this Agreement unless otherwise provided. When used in this Agreement, "including" means "including (but not limited to)" unless otherwise specified, and, if notice is required, that means written notice in accordance with section 7(b).

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

(a) Owner/Lessee shall have the responsibility to record the executed original of this Agreement in the real estate records of Fulton County, Georgia, and pay all fees and charges for the recording. After this Agreement is recorded, if it is returned to Owner/Lessee by the recording authority, Owner/Lessee shall immediately send to the Authority the recorded, executed original of the Agreement, which must show the date, deed book, and page numbers of record. GHFA will not issue any Form 8609 for the Project, and Owner/Lessee may not claim any Credits for the Project, until GHFA receives the original, recorded Agreement.

(b) Owner/Lessee and Lessor intend, declare, and covenant that this Agreement and the covenants and restrictions in it regulating and restricting the rent, use, and occupancy of the Project (including, but not limited to the "Section 42 Rent and Occupancy Restrictions" and the

“GHFA Rent, Income and Occupancy Restrictions,” and the “Additional, Site, Use and Occupancy Restrictions,” as defined below): (1) are covenants running with the Leasehold Estate and the Land, encumbering and burdening the Leasehold Estate and the Land for the term of this Agreement, as set forth in Section 5 (the “Term”); (2) shall bind Owner/Lessee and Lessor and their respective successors and assigns and all future Owners/Lessees and operators of the Project and future owners of the Land during the Term; and (3) are not merely personal covenants of Owner/Lessee or Lessor. This Agreement and the covenants and restrictions in it shall inure to the benefit of the Authority and its successors and assigns and any past, present, or prospective tenant of the Project.

(c) Owner/Lessee and Lessor agree that all requirements of Georgia law for such covenants and restrictions to constitute restrictive covenants running with the Leasehold Estate and Land have been satisfied in full and that any requirement of privity of estate is satisfied, or, in the alternative, that an equitable servitude has been created to insure that such covenants and restrictions run with the Leasehold Estate and Land for the Term.

(d) For the Compliance Period or the Term, whichever is longer, each and every contract, deed, or other instrument (collectively, an “Instrument”) subsequently executed conveying all or any part of the Project, the Leasehold Estate, or Land shall expressly provide that such conveyance is subject to this Agreement and the covenants and restrictions in it, but such covenants and restrictions shall survive, be effective, and bind the Land and the Leasehold Estate and the successors and assigns of Owner/Lessee and Lessor whether or not the Instrument provides that such conveyance is subject to this Agreement. Each Instrument shall be conclusively deemed to have been executed, delivered, and accepted subject to such covenants and restrictions.

SECTION 3A - OWNER/LESSEE'S REPRESENTATIONS, COVENANTS, AND WARRANTIES

Owner/Lessee hereby represents, covenants, and warrants as follows:

(a) Owner/Lessee is a limited partnership, duly organized and validly existing under Georgia law and qualified to do business in Georgia. Owner/Lessee has the power and authority to own its assets and to carry on its business as now being conducted and has the legal right, power, and authority to execute and deliver this Agreement and subject the Leasehold Estate and the Project to the covenants and restrictions in it and to enter into the Ground Lease. The Person or Persons signing this Agreement on behalf of Owner/Lessee have been duly authorized to do so. The Ground Lease is valid and binding on Owner/Lessee in accordance with its terms, and there is no default or event of default by Owner/Lessee under the Ground Lease and no event, which after notice or with the passage of time or both, would constitute a default or event of default under the Ground Lease.

(b) Owner/Lessee's execution and performance of this Agreement (1) do not and will not violate any applicable law, rule, or regulation or any order of any court, agency, or governmental body, and (2) do not and will not violate any indenture, agreement, mortgage, or other instrument binding Owner/Lessee, the Leasehold Estate, or the Project, including the Ground Lease.

(c) There is no action, suit, or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending against Owner/Lessee, the Land, or the Project, or, to the knowledge of Owner/Lessee, threatened against or affecting Owner/Lessee, the Land, or the Project. There is no pending or threatened action or proceeding relating to the Ground Lease or Leasehold Estate.

(d) During the Term, the Project is or will be a “qualified low-income project,” as defined in Section 42 and the Regulations.

(e) During the Term, each Low-Income Unit is or will be a “low-income unit,” as defined in Section 42(i)(3)(A), and suitable for occupancy, as defined in Section 42 and the Regulations, and contains or will contain complete facilities for living, sleeping, eating, cooking, and sanitation. Subject to the exceptions in Section 42(i)(3)(B), each Low-Income Unit is or will be used on other than a transient basis.

(f) During the Term, all Low-Income Units shall be for use by the general public, as defined in Section 1.42-9 of the Regulations, and shall only be leased to persons who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the Low-Income Units) under the election of Owner/Lessee under Section 42(g), as set forth in section 4(a) of this Agreement.

(g) During the Term, Owner/Lessee is prohibited from refusing to lease a Low-Income Unit to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 (“Section 8”) because of the status of the prospective tenant as such a holder.

(h) During the Term, Owner/Lessee may not sell, transfer, or exchange (individually and collectively, “convey” in this subsection) any portion of any building to which this Agreement applies to any Person unless all of such building is conveyed to such Person. Subject to the requirements of Section 42 and this Agreement, Owner/Lessee may convey the entire Project at any time, but Owner/Lessee shall notify in writing and obtain the agreement of any Person acquiring the Project that such sale, transfer, or exchange (collectively, “conveyance” in this subsection) is subject to the requirements of this Agreement, Section 42, and the applicable Regulations. Owner/Lessee shall notify the Authority in writing of Owner/Lessee’s intent to convey all or any part of the Project before any such conveyance. This provision shall not act to waive any other restriction on conveyance of the Project or any low-income portion of the Project. Owner/Lessee agrees that the Authority may void any conveyance of all or any part of the Project if the acquiring Person fails to assume in writing the requirements of this Agreement, Section 42, and the applicable Regulations.

(i) During the Term, Owner/Lessee shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing, unless required to do so by law.

(j) If all or any part of the Project is damaged or destroyed or is condemned or acquired for public use, Owner/Lessee will use its best efforts to repair and restore the Project to substantially the same condition as existed before the event causing such damage or destruction or to relieve or reduce to the maximum extent practical the effects of the condemnation and

render the Project usable for residential housing purposes to the maximum extent practical and thereafter to operate the Project in accordance with the terms of this Agreement.

(k) The representations, statements, materials, and other matters contained in or submitted in connection with the Application were true and complete in all material respects as of the date of submission to the Authority and did not omit any fact or circumstance necessary to make the statements contained in them not misleading. Owner/Lessee is aware of no event that would require any amendment to the Application (other than an amendment which has been filed with and approved by the Authority) or that would make such representations, statements, and other matters or materials not true and complete in all material respects or make them misleading in any material respect. During the Term, Owner/Lessee will abide by all policy statements of the Authority in place at the time of Application and will not take any action that conflicts with or negates any representation made to the Authority in the Application. Before Owner/Lessee may make any change in any matter set forth in the Application, Owner/Lessee must request in writing and receive approval from the Authority, which approval may be granted or withheld in the Authority's sole and absolute discretion.

(l) During the Compliance Period, Owner/Lessee will include and maintain site amenities for the benefit of the Low-Income Tenants, as represented in the Application and set forth in Exhibit C.

(m) During the Term, Owner/Lessee is prohibited from evicting a Low-Income Tenant or terminating the lease of a Low-Income Tenant, except for good cause within the meaning of Section 42, and is prohibited from increasing the gross rent of a Low-Income Tenant, unless such increase is permitted under Section 42.

(n) If the tenant of a Low-Income Unit pays directly the cost of any utilities (other than telephone), the gross rent for that Low-Income Unit includes the applicable utility allowance.

Owner/Lessee will provide the following utilities:

☒ sewer ☒ trash
☐ gas ☒ electricity ☒ water ☐ other _____

Tenant will pay:

☐ sewer ☐ trash
☐ gas ☐ electricity ☐ water ☐ other _____

SECTION 3B - LESSOR'S REPRESENTATIONS, COVENANTS, AND WARRANTIES

Lessor hereby represents, covenants, and warrants as follows:

(a) Lessor is duly organized and validly existing under the laws of the State of Georgia. Lessor has the power and authority to: (1) own, convey, and encumber its assets,

including the Land; (2) enter into the Ground Lease; and (3) enter into this Agreement and subject the Land to the covenants and restrictions in this Agreement. The person or persons signing this Agreement on behalf of Lessor have been duly authorized to do so. The Ground Lease is valid and binding on Lessor in accordance with its terms.

(b) Lessor's execution and performance of this Agreement and the Ground Lease (1) does not and will not violate any applicable law, rule, or regulation or any order of any court, agency, or governmental body, and (2) does not and will not violate any indenture, agreement, mortgage, or other instrument to which Lessor is a party or by which it or the Land is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance.

(c) Owner/Lessee's execution and performance of this Agreement do not violate the Ground Lease, and there is no default or event of default by Owner/Lessee under the Ground Lease and no event, which after notice or with the passage of time or both, would constitute a default or event of default under the Ground Lease.

(d) There is no action, suit, or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending against Lessor, the Land, the Leasehold Estate, or the Ground Lease, or, to the knowledge of Lessor, threatened against or affecting Lessor, the Leasehold Estate, the Ground Lease, or the Land.

SECTION 4 – RENT, INCOME, OCCUPANCY, SITE AND USE RESTRICTIONS

(a) **Section 42 Elections.** Owner/Lessee covenants and agrees that throughout the Term and to satisfy the requirements of Section 42 ("Section 42 Rent and Occupancy Restrictions"):

(1) ☐ At least 20% of the units in the Project will continuously be maintained as both rent-restricted Low-Income Units and occupied by Households whose income is 50% or less of Area Median Gross Income.

(or)

(2) ☒ At least 40% of the units in the Project will continuously be maintained as both rent-restricted Low-Income Units and occupied by Households whose income is 60% or less of Area Median Gross Income.

(b) **GHFA Rent, Income and Occupancy Restrictions.** In its Application, Owner/Lessee made certain representations to the Authority about certain restrictions it would honor in connection with the Project that are more restrictive than the requirements of Section 42 (the "GHFA Rent, Income and Occupancy Restrictions"). Owner/Lessee acknowledges and agrees that such representations were material and the Authority relied upon such representations in deciding to allocate Credits to Owner/Lessee. The additional rent and income restrictions are set forth on **Exhibit B**, which is incorporated herein and made a part of this Agreement. Owner/Lessee covenants and agrees that throughout the Compliance Period, Owner/Lessee shall neither charge nor accept tenant rent that is more than the rents specified on Exhibit B. Further, Owner/Lessee shall comply with the occupancy and income restrictions set forth in that Exhibit.

(c) **Additional Site, Use, and Occupancy Restrictions.** In its Application, Owner/Lessee made certain representations to the Authority about certain covenants it would honor in connection with the Project that are more restrictive than the requirements of Section 42 (the “Additional Site, Use, and Occupancy Restrictions”), and Owner/Lessee acknowledges and agrees that such representations were material and the Authority relied upon such representations in deciding to allocate Credits to Owner/Lessee. These Additional Site, Use, and Occupancy Restrictions are set forth on **Exhibit C**, which is incorporated herein and made a part of this Agreement. Owner/Lessee covenants and agrees that throughout the Compliance Period, Owner/Lessee shall comply with these Additional Site, Use, and Occupancy Restrictions.

(d) **Eligibility**

(1) For each taxable year in the “extended use period” (as defined in section 5), the “applicable fraction,” as defined in Section 42(c)(1), for each building in the Project shall not be less than the smaller of the “unit fraction” and the “floor space fraction” for the building, as those terms are defined in Section 42(c)(1).

(2) Before permitting a Household to rent and occupy a Low-Income Unit, Owner/Lessee shall determine whether the Household’s income exceeds the income limit (including asset income) under this Agreement. Such determination will be made in accordance with the requirements of Section 42, the Regulations, and the Authority. At the time a Household signs a lease for a Low-Income Unit, it must be income-eligible (such a tenant is referred to as a “Low-Income Tenant”). At least annually, Owner/Lessee shall determine whether each Low-Income Tenant still meets the low-income requirements of this Agreement on the basis of the current income of such Low-Income Tenant, as determined in accordance with Section 42, the Regulations, and the Authority’s requirements. Upon re-examination of a Low-Income Tenant’s income, if the tenant’s income is more than 140% of the allowable Household income, the tenant will be considered “over-income,” and Section 42(g)(2)(D) will apply with respect to Owner/Lessee’s treatment of the tenant and the Low-Income Unit.

SECTION 5 - TERM OF AGREEMENT

(a) Unless terminated earlier pursuant to subsection 5(b), this Agreement and the covenants and restrictions in it, including the Section 42 Rent and Occupancy Restrictions shall remain in effect throughout the “extended use period.” In accordance with Section 42, the extended use period shall commence with the first day in the Compliance Period on which any building that is part of the Project is placed in service and end on the date which is 15 years after the close of the Compliance Period. The GHFA Rent, Income and Occupancy Restrictions and the Additional Site, Use, and Occupancy Restrictions shall remain in effect through the Compliance Period. The “Compliance Period” shall be the period of 15 taxable years beginning with the first taxable year of the credit period.

(b) Notwithstanding subsection 5(a), unless the Secretary of the Treasury determines that an acquisition is part of an arrangement with Owner/Lessee, the purpose of which is to terminate the extended use period, the extended use period for any building that is part of the Project shall terminate:

(1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or

(2) On the last day of the one-year period that begins on the date Owner/Lessee properly submits a written request to the Authority, asking the Authority to assist in procuring a “qualified contract,” as defined in Section 42(h)(6)(F), for the acquisition of the low-income portion of the building, but only if the Authority is unable to present a qualified contract during such one-year period; provided, however, such request may not be made before the end of the 14th year of the Compliance Period or at the time specified in Exhibit C, whichever is later.

(3) At the end of the Compliance Period if a plan for tenant Owner/Lessee is in place as more fully set forth in Exhibit C.

(c) Notwithstanding subsection 5(b) or any other provision of this Agreement, the rent requirements in the Section 42 Rent and Occupancy Restrictions and GHFA Rent, Income and Occupancy Restrictions shall continue for a period of three years following the termination of the extended use period under subsection 5(b)(1) or 5(b)(2). During such three-year period, Owner/Lessee shall not evict the tenant of a Low-Income Unit or terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to any such Low-Income Unit.

SECTION 6 - ENFORCEMENT OF RESTRICTIONS

(a) During normal business hours and upon reasonable notice, Owner/Lessee shall permit any authorized representative of the Authority to inspect any books and records of Owner/Lessee relating to the Project and the incomes of Low-Income Tenants.

(b) Owner/Lessee shall submit any other information, documents, or certifications requested by the Authority to substantiate Owner/Lessee’s compliance with the provisions of the GHFA Rent, Income, and Occupancy Restrictions.

(c) Owner/Lessee covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42, the Regulations, or this Agreement. Moreover, Owner/Lessee covenants to take any lawful action (including amendment of this Agreement, as may be necessary in the opinion of the Authority) to comply fully with Section 42, the Regulations, and this Agreement.

(d) Owner/Lessee acknowledges that the primary purpose for requiring Owner/Lessee to comply with the restrictions provided in this Agreement is to assure compliance of the Project and Owner/Lessee with Section 42 and the Regulations. **IN CONSIDERATION FOR RECEIVING THE CREDITS, OWNER/LESSEE AGREES AND CONSENTS THAT THE AUTHORITY AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER A PROSPECTIVE, PRESENT, OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THIS AGREEMENT, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO SPECIFICALLY ENFORCE IN A STATE**

COURT OF COMPETENT JURISDICTION THE REQUIREMENTS AND PROHIBITIONS OF THIS AGREEMENT. Owner/Lessee further specifically acknowledges and agrees that the beneficiaries of Owner/Lessee's obligations under this Agreement cannot be adequately compensated by monetary damages in the event of any default under this Agreement.

(e) If there is a breach of any provision of this Agreement, the Authority may require the Owner/Lessee to perform any action necessary to meet the requirements of this Agreement. The Authority may, in its discretion, apply to any court having jurisdiction of the subject matter for specific performance of this Agreement or for an injunction against any violation of this Agreement.

(f) Owner/Lessee agrees that the Authority and all persons interested in Project compliance under Section 42 and the Regulations may rely upon the representations and covenants set forth in this Agreement.

(g) Owner/Lessee acknowledges that Section 42 and the applicable Regulations require the Authority to monitor the Section 42 Rent and Occupancy Restrictions. Additionally, the Authority has elected to monitor the GHFA Rent, Income and Occupancy Restrictions. Owner/Lessee will take any and all actions reasonably necessary and required by the Authority to substantiate Owner/Lessee's compliance with the Section 42 Rent and Occupancy Restrictions and GHFA Rent, Income and Occupancy Restrictions and will pay a reasonable fee to the Authority for its monitoring activities.

SECTION 7 - MISCELLANEOUS

(a) Severability. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.

(b) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified mail, return receipt requested, to the other party at the address set forth below.

To the Authority:

Georgia Housing and Finance Authority
60 Executive Park South, N.E.
Atlanta, Georgia 30329
Attn: Tax Credit Program Manager

To the Owner/Lessee:

Progressive Welcome House SRO, L.P.
321 W. Hill Street - Suite 3
Decatur, GA 30030
Attn: Bruce Gunter

The Authority and Owner/Lessee may, by notice given in accordance with this section, designate any further or different address to which subsequent notices, certifications, or other communications shall be sent. Any notice to Lessor shall be sent to the notice address set forth in

the Ground Lease, but, for purposes of this Agreement, Lessor may change that address at any time by giving the other parties notice in accordance with this section of the new address.

(c) Amendment. Owner/Lessee agrees that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code and any applicable Regulations.

(d) Subordination of Agreement. This Agreement and the restrictions in it are subordinate to any loan and loan documents on the Project, except as set forth in section 5(c).

(e) Governing Law. This Agreement shall be governed by Georgia law and, where applicable, federal law.

(f) Survival of Obligations. Owner/Lessee's obligations in this Agreement and in the Application shall survive the allocation of the Credits and shall not be deemed to terminate or merge with the awarding of the allocation.

(g) Recitals. The recitals and premises are a part of this Agreement.

[Signatures begin on the next page]

IN WITNESS WHEREOF, Owner/Lessee, Lessor, and the Authority have caused this Agreement to be signed by their authorized signatories with the intention that this Agreement take effect as an instrument under seal, as of the above date.

PROGRESSIVE WELCOME HOUSE SRO, LP

Signed, sealed, and delivered on
May ____, 2008, in the
presence of:

By: Progressive Welcome House, LLC
Its: Managing General Partner

By: _____
Its: _____

Witness

Notary Public

Signed, sealed and deliver on
May ____, 2008, in the
presence of:

**GEORGIA HOUSING AND FINANCE
AUTHORITY**

Witness

By: _____
Laurel Hart, Director
Office of Affordable Housing

Notary Public

Attest: _____
Title: _____

[SEAL]

[Signatures continue on the next page]

Signed, sealed, and
delivered in the
presence of:

THE CITY OF ATLANTA, GA

Unofficial Witness

By: _____

[SEAL]

Notary Public

**EXHIBIT “A”
LEGAL DESCRIPTION**

EXHIBIT "B"
GHFA RENT, INCOME AND OCCUPANCY RESTRICTIONS
(TAX CREDIT ONLY)
[check all restrictions that were elected at the time of Application]

I. Rent/Income Restrictions

☒ (43) Low-Income Units are restricted to Households with an Annual Income of 60% of AMI or less and are subject to the following rental restrictions: 30% of 60% of AMI, adjusted according to bedroom size, on a monthly basis (yearly AMI divided by 12) less the applicable Utility Allowance (these Low-Income Units will be referred to as "LI Units").

☒ (145) Low-Income Units are restricted to Households with an Annual Income of 50% of AMI or less and are subject to the following rental restrictions: 30% of 50% of AMI, adjusted according to bedroom size, on a monthly basis (yearly AMI divided by 12) less the applicable Utility Allowance (these Low-Income Units will be referred to as "VLI Units").

☒ (21) Low-Income Units are restricted to Households with an Annual Income of 30% of AMI or less and are subject to the following rental restrictions: 30% of 30% of AMI, adjusted according to bedroom size, on a monthly basis (yearly AMI divided by 12) less the applicable Utility Allowance.

II. Other Restrictions

☒ **PBRA Governmental**

(106) units will receive project based rental assistance from a governmental entity for at least five years.

☐ **PBRA Non Governmental**

___ units to receive project-based rental assistance from a non-governmental entity for at least five years

☐ **Mixed Income Project**

Project is designated for both low income and market rate tenants. ___ () units will be designated as market rate units.

☐ **PHA Units**

___ units will be reserved and rented to public housing tenants for at least five years.

☒ **DCA Project-Based Rental Assistance for Special Needs Tenants**

Owner/Lessee agrees to accept a DCA Section 8 Project Based Voucher contract for the designation of up to ten (10) units or five (5%) percent of the total units, whichever is less, for occupancy by tenants with special needs who are receiving supportive services through the Georgia Department of Human Resources.

☒ **Targeted Populations Special Needs Tenants**

☐ Developments with a Portion of Units Designated as Targeted: Owner/Lessee agrees to set aside for a period of two years, the greater of three (3) units or five percent (5) of the total units to Targeted Population tenants as well as a Memorandum of Understanding between the Owner/Lessee and a service provider that specifies the services to be provided.

☒ Developments with a Majority of Units Designated for Targeted Population Tenants: Owner/Lessee agrees to set aside a majority of the total units to Targeted Population tenants.

EXHIBIT "C"
ADDITIONAL SITE, USE AND OCCUPANCY RESTRICTIONS

☒ **Accessibility**

At a minimum, 5% of the total units must be equipped for persons with mobility impairments and 2% of the total units shall be made accessible for persons with hearing or visual impairments.

☒ **Extension of Cancellation Option**

Owner/Lessee has the right to request the Authority's assistance in procuring a qualified contract for acquisition of any building in the Project after the end of the 14th year of the Compliance Period. Owner/Lessee has agreed to waive its right to request such assistance for a period of 15 additional years.

☒ **Material Participation by Qualified Nonprofit Organization**

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall hold a controlling interest in the Project, as required by the Authority's rules and guidelines, shall materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Project and shall otherwise meet the requirements of Section 42(h)(5) of the Code. The Owner/Lessee shall notify the Authority (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified nonprofit organization.

☒ **UNIT AMENITIES**

During the Term, Owner/Lessee will include and maintain the following unit amenities for the benefit of the Low-Income Tenants:

HVAC systems, refrigerators, stoves, in-sink disposals, built-in dishwashers, new furniture in all units, an upgraded CCTV security system, and a carbon monoxide suppression system.

☒ **SITE AMENITIES**

During the Term, Owner/Lessee will include and maintain the following site amenities for the benefit of the Low-Income Tenants:

A community room, a covered porch, an onsite laundry facility, an equipped picnic area, an equipped computer center, a furnished library, a furnished fitness center, and an equipped playcourt.

One equipped recreation area defined as suitable for the proposed tenant base:

An enclosed TV room with theater seating.

☒ **TENANCY CHARACTERISTICS**

Throughout the Compliance Period, unless otherwise permitted by the Authority, this Project must be:

☒ **Family Project**

Operated for occupancy by families.

☐ **Elderly Project**

Accessible and intended for and solely occupied by Elderly persons. "Elderly" shall be defined as 62 years of age or older. 100% of the units must be accessible and adaptable. All units must have an installed call system, including a buzzer and light to the exterior. Elevators must be provided for access to units above the ground floor.

☐ **Housing for Older Persons Project**

Accessible, adaptable, and intended for and operated for occupancy by persons 55 years of age or older. 80% of the total housing units in the Project must be occupied by at least one person who is 55 years of age or older. Up to 20% of the units may be occupied by others, including the landlord's employees, surviving spouses or children of residents who were 55 years of age or older when they died, and caregivers. Owner/Lessee must adhere to policies and procedures that demonstrate intent of Owner/Lessee and manager to provide housing for persons 55 years of age or older.



☒ **SUPPORTIVE SERVICES**

Throughout the Compliance Period, unless otherwise permitted by the Authority, Owner/Lessee has agreed to provide the following:

☒ **Family Project**

Owner/Lessee must provide one (1) on-going service designed for the physical or social needs of the tenant population.

☐ **Elderly Project**

Owner/Lessee must provide at least _____ activity/service designed to meet the physical or social needs of elderly persons, in at least ____ of the following categories: recreation/social, transportation, health/wellness, education, counseling, and security (a total of two different services). In addition, Owner/Lessee must provide _____ additional services designed to meet the physical or social needs of the tenant population.

☐ **Housing for Older Persons Project**

Owner/Lessee must provide at least _____ different activities/services designed to meet the physical or social needs of tenants aged 55 and older in at least _____ of the following categories: recreation/social, transportation, health/wellness, education, counseling, and security. In addition, Owner/Lessee must provide _____ additional services designed to meet the physical or social needs of the tenant population.